IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 12TH APRIL 2007 / 22ND CHAITHRA 1929

WP(C).No. 12845 of 2007(D)

PETITIONER:

MARY JOSEPH, POOVAKOTTU HOUSE,
PALAKAYAM VILLAGE, MANNARKAD TALUK.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS:

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1. THE STATE OF KERALA,
REPRESENTED BY DISTRICT COLLECTOR,
PALAKKAD.

2. TAHSILDAR, MANNARKAD.

3. M.K.THOMAS, S/O.KURIAKOSE, AGED 55
YEARS, MELUKUNNEL HOUSE, PALAKKAYAM VILLAGE,
MANNARKKAD TALUK, PALAKKAD DISTRICT.

4. ALEYAMMA D/O.THOMAS, AKKAMATTATHIL
HOUSE, PALAKKAYAM PO. PALAKKAD.

BY GOVERNMENT PLEADER SMT.M.K.PUSHPALATHA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C).No.12845 of 2007-D

Dated this the 12th day of April, 2007

JUDGMENT

The petitioner challenges the proceedings under the Revenue Recovery Act initiated against a part of land purchased by her under Ext.P1 sale deed from her husband's brother. He is a defaulter in relation to sales tax payable to the State. The transfer was made after the liability to pay tax arose. The notice was issued to the petitioner proposing to treat the transfer of the property covered by Ext.P1 as void. The petitioner submitted her reply. After considering the reply, Ext.P4 proceedings was issued declaring that the transfer in her favour is void. Challenging the steps taken against her including the one under Ext.P4, she filed O.S.97 of 2006 before the Munsiff Court, Mannarkad. I.A. 580 of 2006 filed along with the said suit seeking to restrain the State of Kerala and the Tahsildar, Mannarkad from attaching the said property and selling it was considered and dismissed by Ext.P5. The petitioner has filed C.M.A.4 of 2007. She moved an application for injunction in that appeal which is posted to 21-8-2007. In the above background, this writ petition is filed challenging Ext.P4 and also seeking a declaration that the transfer is for valuable consideration and outside Section 44 of the Revenue Recovery Act. She also prays for a direction to proceed against the properties transferred to other near relatives.

2. The challenge against the recovery proceedings under Article 226 of

the Constitution of India is not maintainable as she has already moved the Civil Court for the very same relief. The remedy under Article 226 is not concurrent. (See the decision in **MC. Dowell & Co. Vs. Asst. Commissioner (1985 KLT 428)**. The only point to be considered is whether any direction could be issued to proceed against the properties alienated by the defaulter which is presently in the hands of others. Two other transferees have moved this Court and this Court by Ext.P8 directed to keep in abeyance recovery against the transferees for three months from the date of the judgment and they were directed to produce the details of the assets, if any, of the defaulter. Thereafter, the respondent officials are permitted to proceed against the properties of the transferees who are petitioners in Ext.P8 common judgment. Therefore it is evident that the revenue recovery officials are proceeding against other transferees also. So, it is unnecessary for this court to entertain this writ petition, considering the said grievance. In any view of the matter the transfer of the property have been made after sales tax for the year 1995-96 became due. So, the petitioner, if so advised, may pay the amount for the said year before the sale notified under Ext.P1. If the petitioner could not pay the amount within the said time limit, she may pay the amount within one month from the sale of property. In that event, the sale shall not be confirmed. Subject to the above directions, the writ petition is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

MS